

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
EL DORADO DIVISION

MICHAEL EGGLESTON

PLAINTIFF

v.

Civil No. 1:18-cv-1060

RICKY ROBERTS, Sheriff Union County, AR;
CHARLIE PHILLIPS, Jail Chief; CAPTAIN
MITCHAM, Jail; DR. HOPSON; SHERRI RICE, Nurse;
JOHN WARD; WILLIAM HIGHTOWER;
DILLION MCGEE; RANDY WINDHAM;
MICHAEL GALBRAITH; AND KENNY GULLEDGE

DEFENDANTS

ORDER

Currently before the Court is Plaintiff Michael Eggleston's failure to comply with orders of the Court. Plaintiff filed this 42 U.S.C. § 1983 action *pro se* on October 11, 2018. (ECF No. 1). His application to proceed *in forma pauperis* was granted that same day. (ECF No. 3).

On November 1, 2019, Defendants Galbraith, Gullede, Hightower, Hopson, McGee, Mitcham, Phillips, Rice, Roberts, Ward, and Windham filed a Motion for Summary Judgment. (ECF No. 30). On November 4, 2019, the Court entered an order directing Plaintiff to file a response to Defendants' motion by November 25, 2019. (ECF No. 35). This order informed Plaintiff that failure to timely and properly comply with the order would result in this case being dismissed.

On November 1, 2019, Defendants also filed a Motion for Judgment on the Pleadings. (ECF No. 33). On November 4, 2019, the Court entered an order directing Plaintiff to file a response to Defendants' motion by November 25, 2019. (ECF No. 36). This order informed Plaintiff that failure to timely and properly comply with the order would result in this case being dismissed.

On December 2, 2019, Plaintiff filed a Motion for Extension of Time to respond to Defendants' motions. (ECF No. 38). The following day, the Court granted Plaintiff's motion giving Plaintiff until January 3, 2020 to file a response to the motions. (ECF No. 39). To date, Plaintiff has not filed responses to the Motion for Summary Judgment or the Motion for Judgment on the Pleadings and the order granting the extension of time has not been returned as undeliverable.

On January 8, 2020, the Court entered an order directing Plaintiff to show cause by January 20, 2020, as to why he failed to file a response to the Defendants' Motion for Summary Judgment and Motion for Judgment on the Pleadings. (ECF No. 40). This order informed Plaintiff that failure to timely and properly comply with the order would result in this case being dismissed. To date, Plaintiff has not complied with this Court's order to show cause and the order has not been returned as undeliverable.

Although *pro se* pleadings are to be construed liberally, a *pro se* litigant is not excused from complying with substantive and procedural law. *Burgs v. Sissel*, 745 F.2d 526, 528 (8th Cir. 1984). The Local Rules state in pertinent part:

It is the duty of any party not represented by counsel to promptly notify the Clerk and the other parties to the proceedings of any change in his or her address, to monitor the progress of the case, and to prosecute or defend the action diligently . . . If any communication from the Court to a *pro se* plaintiff is not responded to within thirty (30) days, the case may be dismissed without prejudice. Any party proceeding *pro se* shall be expected to be familiar with and follow the Federal Rules of Civil Procedure.

Local Rule 5.5(c)(2).

Additionally, the Federal Rules of Civil Procedure specifically contemplate dismissal of a case on the grounds that the plaintiff failed to prosecute or failed to comply with orders of the court. Fed. R. Civ. P. 41(b); *Link v. Wabash R.R. Co.*, 370 U.S. 626, 630-31 (1962) (stating the

district court possesses the power to dismiss *sua sponte* under Rule 41(b)). Pursuant to Rule 41(b), a district court has the power to dismiss an action based on “the plaintiff’s failure to comply with any court order.” *Brown v. Frey*, 806 F.2d 801, 803-04 (8th Cir. 1986) (emphasis added).

Plaintiff has failed to obey two orders of the Court. Therefore, pursuant to Federal Rule of Civil Procedure 41(b) and Local Rule 5.5(c)(2), the Court finds that this case should be dismissed. Accordingly, Plaintiff’s Complaint (ECF No. 1) is **DISMISSED WITHOUT PREJUDICE**.

IT IS SO ORDERED, this 27th day of January, 2020.

/s/ Susan O. Hickey
Susan O. Hickey
Chief United States District Judge